

Serial No.: 10/800,082  
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REMARKS

Reconsideration of the present application in view of the above amendments and following remarks is respectfully requested.

Status of the Claims

Claims 1-28 are currently pending, claims 1, 9, 17, 18, 19 and 23 having been amended herein and new claim 28 having been added. Independent claim 1 was been amended herein to specify that the claimed sanitary napkin includes an apertured film body-facing cover layer and a fluid impermeable garment facing layer. Claims 9, 17, 18, 19 and 23 have been amended to more clearly recite the units for basis weight. The specification has been amended in a similar fashion. The Examiner is advised that the units as now recited are the same as the units as recited in US6515195, which was incorporated by reference in the application as filed.

Double Patenting

Claims 1-27 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-28 of copending Application No. 11/184,523. It is noted that this rejection is a provisional rejection in that conflicting claims have not in fact been patented. In the event that the conflicting claims are patented, the applicant will submit a terminal disclaimer to overcome the Examiner's rejection.

Serial No.: 10/800,093

Claim Rejections - 35 USC 112

Claims 1-27 were rejected under 35 USC 112, first paragraph, as not being enabled. The Examiner's rejection is respectfully traversed.

It appears as if the Examiner is objecting to the functional language recited in claim 1. Initially it is noted that there is nothing in the rules or law that prevent an Applicant from claiming an invention utilizing functional characteristics of the invention. In fact the Patent Office has a long history of granting such patents in the sanitary protection article field. For example, it is requested that the Examiner review the claims of US6515195. US6515195 recites the claimed invention by setting forth structural features as well as functional features in a manner similar to the claimed invention. The sanitary protection article art is replete with other patents that claim inventions in a similar manner. If desired the Applicant can provide the Examiner with an extensive list of patents that claim inventions by reciting structural features and functional features in a manner similar to the claimed invention. Thus it is respectfully submitted that the Examiner's rejection is improper and is completely contrary to the Patent Office's own precedent on this issue. It is respectfully requested that the Examiner's rejection be withdrawn.

Claim Rejections Under 35 USC 103

Claims 1-27 were rejected under 35 USC 103(a) as being unpatentable over Fell et al. (US20040253894). The Examiner's rejection is respectfully traversed. The claimed invention, as amended, is directed to a sanitary napkin including an apertured film cover layer having a high open area. However, despite the presence of the high-

Serial No.: 10/800,093

open area cover layer the napkin surprisingly still provides superior rewet and masking. It is respectfully submitted that Fell et al. fails to teach or suggest a sanitary napkin structure that includes an apertured film having a high open area and also provides superior rewet and masking.

In view of the above remarks it is respectfully submitted that the application is now in condition for allowance. The Examiner is invited to call the applicant's undersigned representative if any further action will expedite the prosecution of the application.

In the event that any fees are due for entry of the present amendment the Commissioner is hereby authorized to charge such fees to Deposit Account No. 10-0750/PPC-5053-USANP/PJH.

Respectfully submitted,

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